Supreme Court of the United States

October Term, 1974

No. 73-1499

HAROLD LONGSHORE, FRAZIER RILEY, AND BONNIE BEDENBAUGH, INDIVIDUALLY AND AS OFFICERS OF THE HOLLYWOOD BOOSTER CLUB, AND AS REPRESENTATIVES OF THE CLASS OF PEOPLE BEING SERVED BY THE HOLLYWOOD SCHOOL IN SALUDA COUNTY, AND AS REPRESENTATIVE OF THE PARENTS, FRIENDS AND SUPPORTERS OF HOLLYWOOD SCHOOL, PETITIONERS.

IN RE: UNITED STATES OF AMERICA, PLAINTIFF,

versus

SALUDA COUNTY SCHOOL DISTRICT NO. 1 OF SALUDA COUNTY, SOUTH CAROLINA, AND A. L. BRADLEY, SUPERINTENDENT OF SCHOOLS OF SALUDA COUNTY, SCHOOL DISTRICT 1, SOUTH CAROLINA, DEFENDANTS.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals
for The Fourth Circuit

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Supreme Court of the United States

October Term, 1974

No. ——

HAROLD LONGSHORE, FRAZIER RILEY, AND BONNIE BEDENBAUGH, INDIVIDUALLY AND AS OFFICERS OF THE HOLLYWOOD BOOSTER CLUB, AND AS REPRESENTATIVES OF THE CLASS OF PEOPLE BEING SERVED BY THE HOLLYWOOD SCHOOL IN SALUDA COUNTY, AND AS REPRESENTATIVES OF THE PATRONS, FRIENDS AND SUPPORTERS OF HOLLYWOOD SCHOOL, PETITIONERS.

IN RE: UNITED STATES OF AMERICA, PLAINTIFF,

versus

SALUDA COUNTY SCHOOL DISTRICT NO. 1 OF SALUDA COUNTY, SOUTH CAROLINA, AND A. L. BRADLEY, SUPERINTENDENT OF SCHOOLS OF SALUDA COUNTY, SCHOOL DISTRICT 1, SOUTH CAROLINA, DEFENDANTS.

PETITION FOR A WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

The petitioners herein pray that a writ of *certiorari* issue to review that portion of the judgment of the United States Court of Appeals for the Fourth Circuit, *en banc*, entered in this proceeding on December 13, 1973, which ordered the district court to transfer the students from Hollywood High School to Saluda High School.

OPINIONS BELOW

The petitioners pray for a writ of *certiorari* as to the Order of the Fourth Circuit Court of Appeals, which appears as Appendix A hereto. The judgments of the district court leading up to the present time are listed as Appendices B through G.

JURISDICTION

The judgment of the United States Court of Appeals for the Fourth Circuit *en banc* was entered on December 13, 1973 (Appendix A). This Court's jurisdiction is invoked under 28 U. S. C. § 1254 (1) and Rule 20 of the Rules of the Supreme Court of the United States.

QUESTIONS PRESENTED

1. Is it proper for the Court of Appeals to order a district court to close a high school and transfer the students therefrom to another high school where there is no showing nor any record of any constitutional violation?

2. Does a school board retain authority to make decisions concerning the operations of schools and attendance of children as long as such decisions are neither in violation of a court order or in violation of any person's constitutional rights?

CONSTITUTIONAL PROVISIONS INVOLVED

Article 10 of the United States Constitution:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."

STATEMENT OF THE CASE

On January 26, 1970 (Appendix B), the district court issued an Order supplementing prior orders which brought about the desegregation of the public schools of Saluda County. This order provided for an attendance zone wherein all persons living within one zone would attend the school at Hollywood School, and persons living within the other zone would attend school in the schools in the town of Saluda.

The schools were operated in such manner and without objection by the government or from anyone else until a disagreement occurred locally between the patrons of Hollywood School and the Trustees of School District No. 1 of Saluda County. The basic of the disagreement was whether or not economies could be effected by consolidating the high school at Hollywood with the high school at Saluda. This disagreement resulted in a resolution being passed by the school board calling for the creation of a new school district to be known as Hollywood School District. The new district sought to be created was to be the identical attendance zone as was set forth in the desegregation order attached hereto as Appendix B. Under South Carolina law, taxes must be uniform throughout the territory to which the tax applies. *Smith v. Robertson,* 210 S. C. 99; 41 S. E. (2d) 631. A school district can not be taxed partly on one rate of tax and partly on another. For this reason it was thought that a new district was needed. A referendum was held wherein all of the voters living in the Hollywood area voted as to whether or not they desired to have a school district created. The results of this election were favorable and appropriate action was taken by the school district to create a new school district, which would afford the Hollywood area the means of collecting additional taxes neces-

sary to operate the school. Interim orders were issued by the court to permit the orderly operation of the schools. When the Justice Department entered objection to the creation of the new district under the Voting Rights Act, on February 22, 1973, (Appendix C) the district court ordered the control of the schools returned to the order of the court dated January 26, 1970,(Appendix B). This order specifically required all children living in the Hollywood area to attend school at Hollywood.

At this time, trustees of Saluda School District No. 1 petitioned the district court asking the court to clarify what authority the board of trustees had in the operation of the school. At the time the trustees desired to transfer the high school students from Hollywood to Saluda. In the order of the court dated July 17, 1973 (Appendix D) the district court ordered that the school trustees of School District No. 1 had all of the powers and authorities as are set forth in the laws of South Carolina, so long as the same are "exercised without discrimination based upon race." Specifically, it was decided in said order that the transfer of the students at Hollywood were within the power of the trustees. The court further said: "This court neither endorses nor rejects the proposed plan. The authority is in the Board of Trustees."

There was no requirement in the order or in any order since which requires the transfer of the students. The order merely said that the trustees had the right to make the transfer if they so desired.

On August 2, 1973, the district court ordered that three persons resume duties as members of the board of trustees of Saluda County District No. 2. Following this order (Appendix E), a public hearing was held and the school trustees of Saluda County District No. 1 decided that it would not be in the best interest of all persons concerned to close

the high school at Hollywood. Once again the school trustees attempted to create a school district in accordance with South Carolina law. Once again the district court issued an order to permit the orderly operation of the schools while a determination of the legality of this action was being made (Appendix F). The government moved to stay the order, and following the hearing issued by the district court of September 11, 1973, was made. (Appendix G.)

Specifically the court held:

> "There is no evidence before the court and the plaintiff could offer none, that any action taken or contemplated would disturb the desegregation already accomplished by this court in previous orders." (Appendix G.)

On appeal to the Fourth Circuit Court of Appeals, the Court of Appeals not only reversed the lower court but ordered the transfer of the high school students from Hollywood to Saluda.

Petitioners herein respectfully contend that desegregation has already been accomplished in the Saluda School District and that the transfer of the students from Hollywood to Saluda is not required by the constitutional holdings in any of the desegregation cases in that the segregation has already been dissolved and was satisfactorily done by the order of January 20, 1970 (Appendix B), which was not objected to by the Department of Justice.

This court held in *Swann v. Charlotte-Mecklenburg Bd. of Ed.*, 402 U. S. 1; 28 L. Ed. (2d) 554; 91 S. Ct. 1267:

> "School authorities have the primary responsibility for elucidating, assessing, and solving these problems; courts will have to consider whether the action of school authorities constitutes good faith implementation of the governing constitutional principles. Because of their proximity to local conditions and the possible need

> for further hearings, the courts which originally heard these cases can best perform this judicial appraisal. Accordingly, we believe it appropriate to remand the cases to those courts."

In that case this court recognized that the courts originally hearing the cases best exercised judicial appraisal. It is especially appropriate at this point and time for courts not to arbitrarily order people to do things they do not wish to do where there is no constitutional requirement for such order. Additionally, the court further held in *Swan supra:*

> "In seeking to define even in broad and general terms how far this remedial power extends it is important to remember that judicial powers may be exercised only on the basis of a constitutional violation. Remedial judicial authority does not put judges automatically in the shoes of school authorities whose powers are plenary. Judicial authority enters only when local authority defaults."

Petitioners herein respectfully submit that it was manifest error to close a high school simply because the Court thought it wise to do so unless there is a showing of some constitutional violation. The order and requirement that the school be closed is a greater violation of the civil rights of the parents and children attending said school than any possible benefits in the form of further desegregation. It is respectfully submitted that both black and white join in this petition.

REASONS FOR GRANTING WRIT

1. The Court below assumed the duties of the Board of Trustees in ordering the transfer of high school students from Hollywood to Saluda when there was no showing of any constitutional violation.

The district court held in its order of July 17, 1973, Appendix D of the plan to transfer the high school students

from Hollywood to Saluda: "The court neither endorses nor rejects the proposal plan. The authority is in the Board of Trustees." The government did not appeal this order, it therefore became the law of the case. It, therefore, follows that the action by the court below is manifestly contrary to its proper duty. The only thing the court below had before it for consideration was the order appealed from (Appendix F). There was no record made, no evidence offered, nor any other showing that there was any requirement in the name of desegregation to transfer the children from one school to the other.

2. That the court below was in error in ordering the children from Hollywood High School transferred to Saluda and at the same time permitted the elementary children to remain at Hollywood. Under the court's order of January 26, 1970, (Appendix B), the court created a zone of attendance which was not objected to by the Department of Justice. This order required all children living in that zone to attend school at Hollywood. The same is still in effect as applies to elementary school children, but no longer in effect as applies to high school children. It is completely illogical that the order of the court below was necessary to desegregate the schools of Saluda County as it only included the children in high school and exempted the children in elementary school. In effect, the court's order was to say that desegregation of the elementary school had been effected in the order of January 26, 1970, as applies to elementary children, but ineffective as it applies to high school children.

CONCLUSION

For these reasons, a writ of *certiorari* should issue to review the judgment of the United States Court of Appeals for the Fourth Circuit.

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March 27, 1974.

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United States Court of Appeals

FOR THE FOURTH CIRCUIT

No. 73-2129

UNITED STATES OF AMERICA, APPELLANT,

versus

SALUDA COUNTY SCHOOL DISTRICT No. 1 OF SALUDA COUNTY, SOUTH CAROLINA, ET AL., APPELLEES

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA AT GREENWOOD, ROBERT W. HEMPHILL, DISTRICT JUDGE

Argued October 2, 1973. Decided December 13, 1973.

Before Haynsworth, Chief Judge, and Winter, Craven, Butzner, Russell, Field and Widener, Circuit Judges, sitting in banc.

Thomas M. Keeling, Attorney, United States Department of Justice (J. Stanley Pottinger, Assistant Attorney General, Brian K. Landsberg, John H. Newman, Ross L. Conneally, and Walter W. Barnett, Attorneys, United States Department of Justice and John K. Grisso, United States Attorney, on brief), for Appellant; Robert McC. Figg and Terrell L. Glenn (Thomas H. Pope, Eugene C. Griffith, Daniel R. McLeod, Attorney General of South Carolina, Hardwick Stuart, Jr., Assistant Attorney General and Joseph O. Rogers, Jr., on brief) for Appellees.

PER CURIAM:

This suit was instituted by the United States in May of 1969 under Title VI of the Civil Rights Act of 1964, 42 U. S. C. § 2000e-6, against the Saluda County School Dis-

trict No. 1 of Saluda County, South Carolina, to require the defendants to afford equal educational opportunity to all students in the Saluda County School District without regard to race and to disestablish the dual system of schools then existing in the county.

On October 2, 1969, the district court ordered implementation of a plan proposed by the Department of Health, Education and Welfare to be effective for the 1970-71 school year. At the time suit was instituted the school district was serving 1655 white and 1091 black students and was composed of three schools, each of which accommodated both the primary and secondary grades (1-12). Two of the schools, Saluda and Riverside, were located in the Town of Saluda in proximity to each other, Saluda being predominately white and Riverside being all black. The third school, Hollywood, located in rural Saluda County some ten miles from the Town of Saluda, had an all white enrollment of 340 students of which 87 were enrolled in grades 9-12. Under the plan proposed by HEW and approved by the district court, the school system would have been desegregated by pairing Riverside and Saluda and closing the Hollywood school.

On October 31, 1969, Harold Longshore and others, parents of students in the Hollywood school, filed a motion to intervene together with a petition to amend the October 2nd order to permit Hollywood to continue to operate. Upon the representation of the intervenors that attendance zone lines for Hollywood were drawn on a non-racial basis, the Government did not interpose an objection to the petition, and on January 26, 1970, the district court amended its prior order and allowed Hollywood school to remain in operation to serve all students who lived within the zone as described on a map filed with the court. Under the plan, as amended, school enrollments in 1970-71 were as follows:

School	*Grades*	*Black*	*White*	*Total*	*Percent Black*
Saluda Elem.	K-4	355	376	731	48.6
Saluda H. S.	9-12	260	375	635	40.9
Riverside Middle	5-8	389	412	801	48.5
Hollywood Elem.	1-6	41	225	226	15.4
Hollywood H. S.	7-12	33	197	230	14.3
		1058	1585	2663	39.7

As early as 1969, the educational viability of Hollywood school had been questioned by local, state and federal officials, and on April 4, 1972, a committee report was filed with the Saluda Board recommending the closing of grades 9-12 at Hollywood. This report was based upon a study of finances, recommendations by the State Department of Education, and a history of the enrollments, drop-outs and limited curriculum. Shortly thereafter, a bill was introduced in the South Carolina Legislature and passed on May 22, 1972, as Act 1244 of the 1972 Legislative Session. Briefly stated, the Act provided for the establishment of Hollywood School District No. 4 in Saluda County to be governed by its own board of trustees, contingent upon approval by referendum of the electorate residing in the geographic area encompassing the proposed school district. The geographic area of the new district was described in the Act as coterminous with the Hollywood attendance zone theretofore recognized by the district court's order of January 26, 1970. The referendum pursuant to the Act was held on May 23, 1972, and the proposed school district was approved by a vote of 661 to 100.

On August 4, 1972, the intervenors petitioned for approval of the new school district and on August 17 and September 1, 1972, protective orders were entered which in effect preserved the status quo pending a decision by the Attorney General of the United States on a submission of the legislation pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U. S. C. § 1973 (c). On November 13, 1972, the Attorney General entered an objection to the procedures used in the establishment of

the new school district, and thereupon the Government filed its motion to dismiss the motion for approval. By order of February 23, 1973, the district court, finding the special legislative act to be unenforceable, granted the Government's motion and reinstated its order of January 26, 1970, bringing the Hollywood school within the operation of Saluda County School District No. 1.

In July of 1973, the Saluda Board filed a petition with the district court which in effect sought approval of a plan which would close the Hollywood High School but continue to operate the Hollywood Elementary School with an expanded curriculum. The petition was accompanied by a comprehensive report of the Superintendent which pointed out the educational and financial desirability of the proposal. On July 17, 1973, over the objection of the Longshore intervenors, the district court entered an order recognizing the authority of the Board of Trustees of Saluda District over "any and all schools in Saluda County" and stating that "the true transfer of Hollywood Grades 9, 10, 11 and 12 are declared within the power of the movants." In its order the court recognized that under the proposal Saluda High School would be the only high school in the county "so that discrimination in such school could not exist insofar as denial of any person's rights to an equal public education because of race, creed or color would be concerned." By order entered on August 3, 1973, the three individuals who had qualified as Trustees of the Hollywood District under the abortive procedure of Legislative Act 1244 were authorized to serve as Trustees of the Saluda District along with the six other members of that Board.

On August 20, 1973, the order which is the subject of this appeal was entered by the district court. In substance it stated that the Board of Trustees of the Saluda District "with the required legislative approval in writing" had adopted a resolution establishing the Hollywood School District as thereafter defined as a separate school district in accordance with the provisions of Section 21-112, Code of Laws of South Carolina—1962. The order recited that this action fell within purview of the order of July 17, 1973, and that such order was modified "to the extent necessary to

permit this action." It further retransferred the three Hollywood residents from the Saluda School Board to the Hollywood Board of Trustees. On its fact the order indicated that it was entered with the consent of counsel for both the Saluda School District and the Hollywood group. Conspicuous by its absence, however, was any indication that counsel for the United States either saw the order prior to its entry or consented thereto. Shortly thereafter the Government filed a motion with the district court seeking a stay of this order, stating that it had received neither a notice nor the oportunity to be heard prior to the entry thereof. In its motion the Government raised the constitutional question with respect to the racial composition of the Hollywood School District and also charged that the creation of the new school district in this manner was subject to the preclearance provisions of Section of the Voting Rights Act.[1]

Thereafter on September 11, 1973, the district court conducted a hearing and entered an order directing the State Superintendent of Education to release both state and federal funds to the Hollywood School District prior to September 20, 1973. On the same date the court denied the motion of the United States to stay its order of August 30, 1973, pending appeal. This latter order stated:

> "No order of this court has either authorized or condoned the creation of a new school district. This court has consistently refused to do so. Such issue is not before this court and was not before the court or passed on by the court in the orders of July 17, 1973, and August 20, 1973."

Despite this disclaimer by the district court, it is clear that in the context of this litigation the order of August 20, 1973, did in fact authorize and/or condone the establishment of the new school district, and it is equally clear that such action was totally at odds with the principles of *Wright v. Council of City of Emporia*, 407 U. S. 451 (1972), and

[1] Counsel discussed the issue of the Voting Rights Act in both their briefs and oral argument. However, we deem it unnecessary to deal with the somewhat tangential question under the Voting Rights Act, since we find the constitutional issue clearly delineated in the record and the conclusion thereon inescapable.

United States v. Scotland Neck Bd. of Educ., 407 U. S. 484 (1972). The attempt of the appellees to preserve the predominantly white Hollywood enclave in a county where a dual school system had long flourished is precisely the conduct condemned by the Court in those decisions, and there is even more in the present case. The district court had before it, indeed it had approved, a proposal which it recognized would have erased the last vestiges of segregation from the high schools of Saluda County. Additionally, the proposal espoused by the Superintendent and Board of the Saluda School District would have increased the quality of the education for all school children in the county. The creation of the Hollywood District utterly frustrated the implementation of these proposals and unquestionably was an impediment to "the dismantling of the dual system." *Wright v. Council of City of Emporia, supra*, 407 U. S. at 460.

Counsel for the appellees urge upon us that the primary reasons for the creation of the new school district were non-racial in character. Even accepting this premise, however, it fails to pass constitutional muster for the "dominant purpose" test was specifically rejected in the *Emporia* case and the Court stated unequivocally "that splinter school districts may not be created 'where the effect—to say nothing of the purpose—of the secession has a substantially adverse effect on desegregation of the county school district.' "[2]

Finding the creation of the Hollywood School District to be constitutionally impermissible, the order entered by the district court on August 20, 1973, is vacated, and the case is remanded with directions to the district judge to take whatever steps may be necessary or appropriate to reinstate the authority of the Board of Trustees of Saluda School District No. 1 over all schools in Saluda County and to effect the transfer of Hollywood Grades 9 through 12 to Saluda High School.

VACATED and REMANDED WITH INSTRUCTIONS.

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[2] 407 U. S. at 462.

APPENDIX B

ORDER

Petitioners requested permission of the court to intervene [1] in this action in order to seek relief after judgment pursuant to Rule 60B. Plaintiff objected on the grounds that the same relief could have been requested by the school board (already parties to the action). Plaintiff does not object to relief sought by the petitioners. The motion to intervene is granted and the request for relief after judgment is also granted.

The Order issued by this court on October 2, 1969, is hereby amended so as to provide:

All students who live within the zone (including students living on both sides of the roads), as illustrated by petitioner's Exhibit No. 1, shall attend school at Hollywood School.

The Superintendent of Schools of Saluda County shall report by letter on May 1 and October 1 of each year to the Assistant Attorney General, Civil Rights Division, and send copies of the reports to the Clerk of this Court, the South Carolina Department of Education, and the Senior Program Officer of the Department of Health, Education and Welfare, Atlanta Office, the racial composition of each school in the district with respect to pupils, faculty and staff (including secretaries and cafeteria employees), as well as the names, race, teaching stations, certification, national teachers examination score, and length of service in teaching, of each new teacher and staff member hired, and similar information for each teacher and staff member who leaves the system or who has been transferred from one school to another in the district, or applied for employment, including the reason for leaving or being transferred or not being hired.

---

[1] FED. R. CIV. P. 24.

All other provisions of the Order of October 2, 1969, not inconsistent with this Order, shall remain in effect until further ordered by this court.

AND IT IS SO ORDERED.

/s/ ROBERT W. HEMPHILL,
United States District Judge.

Columbia, South Carolina,
January 26, 1970.

APPENDIX C

ORDER

On August 4, 1972, petitioners, Longshore *et al.*, moved this Court to approve the establishment of a new school district, known as Hollywood School District No. 4, embracing that area of Saluda School District No. 1 formerly served by the Hollywood School Attendance Zone. The United States filed a response requesting a continuance of this matter inasmuch as the requested approval raised constitutional questions concerning the desegregation of the school district which the United States had not had the opportunity to explore, and the Act of the South Carolina Legislature authorizing the establishment of the new school district had been submitted to the Attorney General of the United States for consideration pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U. S. C. 1973c. On August 17, following a hearing, this court entered an order providing that all schools would continue to be operated pursuant to the January 26, 1970, order in this case pending the resolution of objections by the United States to the formation of the school district, if any were subsequently filed; if the United States did not object, the order provided that the Board of Trustees of Hollywood School District No. 4 would assume their offices and exercise authority pursuant to state law. On September 1, 1972 this Court entered a further order with the consent of the parties providing for the disbursement of federal, state and local funds to each school district pending a determination

of whether the establishment of Hollywood School District No. 4 met the requirements of federal law.

On November 13, 1972 the Attorney General of the United States, pursuant to Section 5 of the Voting Rights Act, entered an objection to the procedures used to establish the new school district. On the same date the United States moved to dismiss petitioners' motion for approval of the new school district and for this Court to dissolve its previous protective order inasmuch as Section 5 barred enforcement of the Act establishing the new district.

Plaintiff's motion to dismiss was heard on February 12, 1973. All parties agreed that the Act of the South Carolina Legislature establishing Hollywood School District was submitted to the Attorney General of the United States for consideration pursuant to Section 5 of the Voting Rights Act of 1965, and that the Attorney General subsequently entered an objection to the Act in accordance with Section 5. No action for a declaratory judgment from the United States District Court for the Ditsrict of Columbia has been commenced as provided by Section 5. Under these circumstances, the legislative Act establishing Hollywood School District No. 4 is not legally enforceable. *Allen v. State Board of Elections,* 393 U. S. 544 (1969); *Sheffield v. Itawamba County Board of Supervisors,* 439 F. (2d) 35 (5th Cir. 1971); *Dyer v. Love,* 307 F. Supp. 974 (N. D. Miss. 1969); *United States v. State of Georgia,* .... F. Supp. .... (C. A. No. 16373, N. D. Ga. decided April 19, 1972). Moreover, this Court does not have jurisdiction to consider issues arising under Section 5 of the Voting Rights Act of 1965. Issues concerning the applicability of Section 5 are expressly reserved to a three-judge court, and the issue of whether the matter in question has a discriminatory purpose or effect is the exclusive jurisdiction of the District Court for the District of Columbia. *Allen, supra; Perkins, supra.* Therefore, in view of the above, plaintiff's motion is hereby granted and petitioner's request for approval of Hollywood School District is dismissed without prejudice to petitioners' right to proceed in an appropriate court.

The legislative Act establishing Hollywood School District No. 4, was rendered unenforceable by the Attorney

General's objection under Section 5. *Allen, supra,* at 572; *Sheffield, supra,* at 36; *Dyer v. Love, supra,* at 981.

Therefore, this Court's interim orders of August 17 and September 1, 1972, providing for the operation of Hollywood School District No. 4 pending a determination of whether the formation of the school district met the requirements of federal law, shall be dissolved; and this Court's January 26, 1970 order, providing for the operation of the Hollywood schools by the Board of Trustees of Saluda County School District No. 1, shall be reinstated. It is the Court's judgment, however, that dissolution of the August 17 and September 1 orders at this time would not be educationally or administratively sound.[1] Accordingly, this Court's orders of August 17 and September 1, 1972, shall be dissolved effective June 30, 1973, or at the conclusion of the school year, which ever comes earlier, and the Court's January 26, 1970 order fully reinstated.

ORDERED this 22 day of February, 1973.
@ Greenville, S. C.

/s/ ROBERT W. HEMPHILL,
United States District Judge.

TRUE COPY
Test:
MILLER C. FOSTER, JR., Clerk,

/s/ .....

By: Deputy Clerk.

[1] Of course, proceedings for a declaratory judgment that the establishment of Hollywood School District No. 4 meets the requirements of federal law may still be commenced pursuant to Section 5. However, counsel for petitioners and counsel for defendants both indicated to the Court that no such action would be taken. In light of this circumstance, should such an action be filed the parties may at that time seek a protective order in the appropriate court.

APPENDIX D

Civil Action No. 69-460

ORDER

By notice dated July 11, 1973, defendant Saluda County School District No. 1 advised all other parties that it would ask the court for certain relief set forth in a petition attached to the notice. The petition, asking clarification of previous orders (which counsel advised were for the purpose of assuring that the School District did not violate those orders), asked that this court declare that the full exercise by the Trustees of the moving District of the power and authority of School Trustees, as set forth in Sections 21-221 and 21-230, Code of Laws of South Carolina, 1962, Annotated, are within the ambit of the orders of this court, so long as the same do not provoke any discrimination, and do not offend any of the court's previous orders. The real issue evolves around the proposal of the Board of Trustees of Saluda County School District No. 1 to effectively consolidate a portion of the school known as the Hollywood School, precisely, the high school students and facilities of Hollywood School (Grade 9 through 12 inclusive) to Saluda High School. The petition proposed no plan or purpose to close Hollywood School as such, and the maintenance of the Kindergarten and Grades 1 through 8 has been programmed by the Board of Trustees, and this was reaffirmed by counsel at the hearing before this court on July 16, 1973, at Rock Hill, South Carolina.

This case has a long and circuitous history, since its institution by the filing of a complaint in the District Court of South Carolina in May 1969; the United States of America, pursuant to Section 407 of the Civil Rights Act of 1964[1] therein alleged that the schools of Saluda County were operated under a policy of racial segregation, and therefore in violation of the rights of certain of the populace because of the racial discriminations effected The Complaint prayed for an order permanently enjoining the defendants, their agents, servants and successors, and all other parties

[1] 42 U. S. C. 2000c-6, et seq.

having a part or parcel of the administration of the Saluda County School system, failing or refusing to afford an equal education to all students of Saluda County. After the discovery period, the case was assigned to this member of the court, who after hearing and consideration, on October 2, 1969, issued an order effectively granting the relief demanded by the plaintiff, and ordering desegregation of the schools of Saluda County. Thereafter, on November 10, 1969, certain individuals, namely Harold Longshore, Frazier Riley, and Barney Bedenbaugh, asked permission, pursuant to Rule 24(b), Federal Rules of Civil Procedure, to intervene in behalf of the class of persons similarly situate, catalogued as being served by the Hollywood School District in Saluda County, and as representatives of the patrons, friends and supporters of Hollywood School, which, at the time, comprised one of the schools of Saluda County School District; further asking that the Hollywood School, previously ordered closed by the court, be allowed to remain open, and asking that the previous order of the court, in accordance with Rule 60(b), Federal Rules of Civil Procedure, be amended to accomplish the continuation of such school. Suffice it to report, for the purpose of this order, that Hollywood School was allowed to remain open and has remained open since that time, and its continuation and operation have but become a perennial issue before this court.[2]

The court has continuing jurisdiction, and no one has ever questioned whether or not the continuing jurisdiction involved all issues in the operation of the school district, or was originally intended to encompass only those issues which had to do with the Civil Rights Act of 1964. At the hearing on July 16th no serious question as to the jurisdiction of this court was proposed.[3]

On January 26, 1970, the order of this court allowed intervention and amended the order of October 2, 1969, to provide that:

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[2] A history of the various problems is included in a previous order.

[3] The United States District Courts, *the trial courts of the Federal system*, have grave and varied responsibilities in school matters.

All students who live within the zone (including students living on both sides of the road) as illustrated by petitioner's exhibit No. 1, shall attend the school at Hollywood School.

Apparently, subsequent to this order, the Hollywood School continued its operation, and thereafter an attempt was made to set up a school district known as Hollywood School District. By order dated August 17, 1972, filed the same date, this court refused to assume jurisdiction of the issue of whether or not the creation of the Hollywood School District was proper under State authority, refused to set the boundary lines, but did allow an attendance zone to exist and continue for the purpose of attendance of Hollywood School, and for such purpose only.

On February 19, 1973, this court again defined the attendance area of the Hollywood School, and did not attempt to define other issues. On February 23, 1973, following an objection of November 13, 1972, by the Attorney General of the United States, that the procedures used to establish the Hollywood School District violated Section 5 of the Voting Rights Act of 1965 (which was not contested) this court dissolved certain of its other orders, because the operation of Hollywood Schools, by a separate Board of Trustees, was no longer legal. The dissolution was dated to be effective June 30, 1973, or at the conclusion of the school year whichever came earlier, and the court's order of January 26, 1970, effectively recognized the jurisdiction and authority of the Board of Trustees of Saluda County School District Number One was reinstated.

The Intervenors, by way of return to the present petition, pled that the granting of the petition would effectively provoke reactionary discrimination because of "white flight" which would occur if Grades 9, 10, 11 and 12 of the Hollywood School were transferred to the Saluda High School. It is admitted that if the grades were transferred, that Saluda High School, located at Saluda, South Carolina, would be the only high school age and class would attend that school, so that discrimination in such school could not exist insofar as denial of any person's right to an equal

public education because of race, creed or color would be concerned. It has been clearly held that the threat of "white flight" is not sufficient to bar an order of total desegregation.[4]

Attached to the return of the Intervenors was a Resolution by the Board of Trustees of School District Number One of Saluda County, wherein by unanimous vote, a referendum was caused to be held in the Hollywood attendance area of Saluda County to determine the wishes of the electors of the area as to the establishment of a school district to be known as Hollywood School District Number Four. It was admitted that this Resolution was authentic, and the same was not challenged. It was further admitted that at a referendum held on May 23, 1972, that 661 residents of the Hollywood attendance area voted in favor of the creation of the new school district and that 100 voted against the creation. Upon the report of the referendum result, all of the Senators and Members of the House of Representatives of the Legislative Delegation of Saluda County, South Carolina (General Assembly of South Carolina), signed their written approval of the creation of the school district in accordance with the provision of Section 21-12, South Carolina Code, 1962, as amended.

The United States, represented at the recent Rock Hill hearing by an Assistant United States Attorney, and a Deputy Assistant Attorney General of the United States (Civil Rights Division), gave vocal support, in the hearing, to the petition movants have filed. In addition, upon query by the court, counsel advised that the Civil Rights Division of the Department of Justice would seriously question the recent action attempting to form Hollywood School District Number Four, and represented that in all probability the Department would take the position previously taken as to the attempt at creation by legislative act.

This court is thus faced with a climate of confusion. If the new school district is properly conceived (and later put into full operation), as provided by Section 21-112,

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[4] *United States v. Scotland Neck City Bd. of Ed.* (1972), 407 U. S. 484, 92 S. Ct. 2214, 33 L. Ed. (2d) 75.

South Carolina Code, 1962, Annotated,[5] there is no legislative act defining the authority of the District, and, presently, there is no properly constituted Board of Trustees empowered to act, direct, or administer. The maturity of those processes necessary to place the newly proposed school district in operation are missing. Meanwhile, the time factor of planning and preparation for the new school year (the fiscal year commences July 1, 1973, and the school operation commences in late August or early September) makes immediate action imperative. To deny the motion (petition) would project a further confusion and uncertainty not justified by any facts presently before this court.

The Intervenors asked for a hearing. It appears that the hearing was for the purpose of taking testimony as to the possible "white flight", or to consider the opinions of citizenry, who would oppose the petition, that the plans to transfer would effect a negative, or reactive, discrimination. Gathered in the courtroom were fifty-odd citizens of the Hollywood attendance area, whose commendable interest in keeping high school grades at Hollywood, to-

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[5] Section 21-112 provides: Alteration of boundaries or division of school districts.—Unless otherwise expressly provided, the school districts of the various counties shall not be altered or divided except:

(1) By act of the General Assembly relating to one or more counties; or

(2) By authorization of the county boards of education under the following conditions;

(a) With the written approval of the Senator and the entire house legislative delegation from the county involved;

(b) Upon a written petition, signed by at least four fifths of the qualified electors embraced within the limits of each of the school districts involved, which shall state plainly to the county board of education the action petitioned and shall also bear the signed certificate of the members of the county board of registration that the number of electors who signed the petition represent at least four fifths of the qualified electors embraced within the limits of each of the school districts involved; or

(c) Upon the written petition, signed by at least one third of the qualified electors embraced within the limits of each of the school districts involved, which shall state primarily the action petition and shall bear the signed certificates of the members of the county board of registration that the number of the electors who signed the petition represent at least one third of the qualified electors embraced within the limits of each of the school districts involved; such consolidation be approved favorably by a majority of the qualified electors of each of the school districts involved at an election called by the county board of education for the purpose.

gether with their understandable ambition to continue an operation which is dear to the community,[6] excite the court's admiration and appreciation. Be that as it may, the schools have to open in August or September, and the court cannot supervise the schools by judicial fiat.

Exhibited to the court (Defendant's Exhibit No. 1 of the hearing of July 16, 1973), was the "Annual Report of the Superintendent [Hollywood School District Four, Route 1, Saluda, South Carolina, 29138]" to the Board of Trustees, dated June, 1973. This revealed that for the school year 1972-73 Hollywood School District Four had anticipated revenues of $339,287.93, and total expenditures of $365,981.31, resulting in a deficit of $26,693.38. The per pupil expenditure for current operations for 1972-73 was $677.00 per pupil, as opposed to the national average [1970-71—this could, of course, increase in 1972-73] of $667.00 and a state average [again 1971-72] of $627.00. The anticipated budget for 1973-75, with high school included, is $423,912.31 which is an increase of $57,931.00; apparently, another deficit is anticipated.[7] Another portion of the report reads:

> D. Curriculum
>
> A curriculum study for both elementary and secondary levels remains an urgent need. Good intentions for conducting a study this year (1972-73) have been completely frustrated by the lack of certainty for continuation of the District. Also, the fact that an efficient study requires a high degree of motivation of the entire school staff which just was not possible under the working conditions of the current year. Never-the-less, the need remains and becomes even more important in view of the State Department of Education's intention to implement the "Defined Minimum Program." In addition to the need for updating the school program and selection of textbooks and

[6] It is uncontradicted that in the 1972-73 school year interested citizens—patrons of the Hollywood School contributed $20,000 in services to the school, to aid in its operations.

[7] In 1972-73 School District No. 1 had an assessment, county-wide of 54 mills. Hollywood, with an additional 44 mills, and a $30,000 loan from Bankers Trust, had a deficit.

materials for teaching, consideration must be given to the requirement for provision for special programs for handicapped students. It is recommended that the reading program be continued and that all available Title I funds be used toward continuation and expansion of the program so as to more effectively meet individual student needs. Other sources of funds must be located and tapped to support programs for the handicapped as these are now required by law and the district is presently in violation of this requirement.

There certainly is much to recommend a small high school such as Hollywood. Still from the economy point of view it is very costly. In order to provide the minimum (40) courses required and to meet the standards for the library and guidance, fifteen teachers must be employed. The present high school enrollment of 149, even with 95 percent ADA meets state requirements for only 5.5 teachers; leaving 9.5 teachers off enrollment. By combining grades seven and eight with the high school, the teacher-pupil ratio is raised from 1-10 to 1-15 which in turn reduces the off enrollment teachers to six. Even so this calls for approximately $40,800.00 for salaries which must be raised entirely from local resources. In addition, it is very difficult to schedule so few students into so many classes and still have the minimum number required for operation of the class. It proved to be necessary to schedule students into such classes as Vocational Education and Chorus out of study halls and to have some students enrolled in six rather than five subjects in order to comply with class size minimums.

Less than half of the students enrolled in the high school are in the college preparatory program. Some that are will change (out of the program) during the four years. This fact points up the wisdom of giving more emphasis to the general education courses and to remedial or developmental courses for the majority of students that are terminating their education at the secondary level.

These facts are not persuasive as to the decision of this court except to point out the necessity of supervision at the school level where knowledge and experience can be relied on. The court does not have the time, and is doubtful of its authority to monitor every administrative decision, except for the purpose of securing equal opportunity of education regardless of race, creed, or color. This court is concerned with the main issue in this case and abstains from allowing the merits or demerits of side issues to cause neglect of that which must be done. See *Griffin v. Board of Supervisors of Prince Edward County*, 332 F. (2d) 332 (4th Cir. 1963). The schools must open in an orderly fashion.

The program envisioned by the Board of Trustees of Saluda School District One is incorporated in a letter of July 9, 1973, from Howard E. Moody, Superintendent, to the Board of Trustees. A copy of that letter was attached to the petition, but was not introduced. For purposes of completing the record the School Board is directed to file a certified copy with the Clerk of this court who shall mark it "Defendant's Exhibit No. 2". This court neither endorses nor rejects the proposed plan. The authority is in the Board of Trustees.

Unless and until further order of this court the Board of Trustees of Saluda School District One of Saluda County, South Carolina, is fully empowered to exercise, as to any and all schools in Saluda County, South Carolina, all powers vested in them as provided in Section 21-221 [8] and 21-230,[9] South Carolina Code of Laws, 1962,

[8] Section 21-221 provides: Districts under management of boards of trustees.—Each school district shall be under the management and control of the board of trustees provided for in this article, subject to the supervision and orders of the county board of education.

[9] Section 21-230. General powers and duties of school trustees. The board of trustees shall also:

(1) Provide schoolhouses. Provide suitable schoolhouses in its district and make them comfortable, paying due regard to any school house already built or site procured, as well as to all other circumstances proper to be considered so as best to promote the education interest of the district;

(2) Employ and discharge teachers. Employ teachers from those having certificates from the State Board of Education, fix their salaries or discharge them when good and sufficient reasons

Annotated. Nothing in any order heretofore entered in this action shall be taken or construed to affect the full exercise by the School Trustees of Saluda County School District No. 1, Saluda County, South Carolina, of the powers and authority of School Trustees under the laws of South Carolina, as set forth in Sections 21-221 and 21-230 of the Code of Laws of South Carolina, so long as the same are exercised without discrimination based upon race. Specifically, the transfer of Hollywood Grades 9, 10, 11 and 12 are declared within the power of movants.

In furtherance of the orders of this court, and to promote the orderly carrying out of same, all other courts are enjoined and prohibited from violating, interferring with, enjoining, prohibiting, or delaying enforcement of this order. 28 U. S. C. 2283.[10] This shall not prevent any party or parties hereto from seeking a declaratory judgment from any court of competent and declaratory juris-

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for so doing present themselves, subject to the supervision of the county board of education.

(3) Suspend or dismiss pupils. Suspend or dismiss pupils when the best interest of the schools makes it necessary;

(4) Call meetings of electors for consultation. Call meetings of the qualified electors of the district for consultation in regard to the school interests thereof, at which meetings the chairman or other member of the board shall preside, if present;

(5) Control school property. Take care of, manage and control the school property of the district;

(6) Visit schools. Visit the public schools within its district from time to time and at least once in every school term and take note that they are conducted according to law and with the utmost efficiency.

(7) Control educational interests of district. Manage and continue local educational interests of its district, with the exclusive authority to operate or not to operate any public school or schools.

(8) Charge matriculation and incidental fees. Charge and collect matriculation and incidental fees from the pupils when allowed by special act of the General Assembly; and

(9) Transfer and assign pupils. Transfer any pupil from one school to another so as to promote the best interests of education, and determine the school within its district in which any pupil shall enroll.

[10] 28 U. S. C. § 2283 provides: Stay of State court proceedings. A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by vote of Congress, or where necessary in aid of its jurisdiction, or to protect of effectuate its judgments.

diction as to any issues not under the jurisdiction of, or determined by, this court.

AND IT IS SO ORDERED.

/s/ ROBERT W. HEMPHILL,
United States District Judge.

Rock Hill, South Carolina
July 17, 1973

TRUE COPY
Test:
MILLER C. FOSTER, JR.,
Clerk.

/s/ CYNTHIA SKIPPER,

By: Deputy Clerk.

APPENDIX E

ORDER

In an effort to achieve harmony between the dissident groups in this litigation, counsel for the Petitioners Harold Longshore, *et al.*, and counsel for Saluda County School District No. 1 move the Court for an Order authorizing and empowering the three members of the Board of Trustees of Hollywood School District No. 4 who reside in the Hollywood Attendance Area to assume duties as Trustees of Saluda County School District No. 1 and to exercise the duties of such Trustees either until further Order of this Court or any other Court of competent jurisdiction or until their successors are elected and qualify.

Counsel have stipulated that this action on their part will not constitute a waiver on the part of their respective clients as to any rights they may have; they have adopted this joint action in the hope that by doing so they can concontribute to the settlement of this matter.

The purpose of this Order is to permit Fred Mills, Alvin Riddle, and Osborne Bedenbaugh (who were duly elected Trustees of Hollywood School District No. 4 at the time of the legislative act attempting to establish Hollywood School District was approved by the Governor of

South Carolina to serve as Trustees of Saluda County School District No. 1 along with the six regularly elected Trustees who reside outside the Hollywood area.

It is, therefore,

ORDERED, ADJUDGED AND DECREED That Fred Mills, Alvin Riddle and Osborne Bedenbaugh do reassume their duties as members of the Board of Trustees of Saluda School District No. 1 and discharge the same until either further Order of this Court or any other Court of competent jurisdiction or until their successors are elected and qualify.

ROBERT W. HEMPHILL,
United States District Judge.

August 2, 1973.

WE MOVE:

THOMAS H. POPE,
EUGENE C. GRIFFITH.

TRUE COPY.
Test:
MILLER C. FOSTER, JR., Clerk,

CYNTHIA SKIPPER,

By: Deputy Clerk.

APPENDIX F

Civil Action No. 69-460

ORDER

On July 17, 1973, this Court issued an Order recognizing the authority of School District No. 1 Board of Trustees to exercise full control of the schools therein so long as the same was without discrimination based upon race. Subsequently, this Court issued a Consent Order on August 2, 1973, which placed on the Board of Trustees of School District No. 1 three (3) persons to represent the area known as the Hollywood attendance area.

Since the passage of these two Orders, counsel for the contesting groups have made laudable efforts to restore

peace and harmony to the educational system of Saluda County. However, these efforts have been in vain, and such counsel have advised this Court that the Board of Trustees of Saluda County School District No. 1 has, in the exercise of its function as the County Board of Education, and with the required legislative approval in writing, passed a resolution establishing the Hollywood School District in accordance with the provisions of Section 21-112, Code of Laws of South Carolina, 1962. The area of the Hollywood School District thus established is the area defined in the Order of the Court of February 19, 1973, which is, of course, without prejudice to the rights of qualified electors in Saluda County to further alter school districts under said Section 21-112. Such action is within the purview of the Order of this Court dated July 17, 1973, and will enable the schools of Saluda County to open on August 21, 1973. The earlier Orders of July 17 and August 2, 1973, are modified to the extent necessary to permit this action.

The Order of August 2, 1973, is further modified to provide that the three (3) named individuals, residents of the Hollywood area, shall no longer serve on the Saluda County School District No. 1 Board of Trustees, but shall immediately assume office as Trustees of the Hollywood School District.

Counsel for the contesting groups have informed the Court that such groups reached the understanding that the Board of Trustees of the Hollywood School District shall have the right to permit those now or hereafter residing in the geographical area referred to in this Court's Order of September 1, 1972, as being depicted in pink on the map attached thereto to enroll in the schools of said district and to operate appropriate school bus transportation in question therewith.

Such counsel have also informed the Court that all funds which the State Superintendent of Education is responsible for distributing will be allocated and distributed to these districts consistent with the procedures and regu-

lations of State and Federal law applicable to school districts in South Carolina.

AND IT IS SO ORDERED.

ROBERT W. HEMPHILL,
United States District Judge.

Columbia, South Carolina,
August 20, 1973.

WE CONSENT:

THOMAS H. POPE,

ROBERT McC. FIGG,
Attorneys for Saluda County School District No. 1,

EUGENE C. GRIFFITH,

GLENN, PORTER AND SULLIVAN,

By: TERRELL L. GLENN,
Attorneys for Hollywood School District Booster Club and Hollywood School District Board of Trustees.

TRUE COPY.
Test:
MILLER C. FOSTER, JR., Clerk,

CYNTHIA SKIPPER,

By: Deputy Clerk.

APPENDIX G

ORDER

Plaintiff's Motion to stay and order of this court of August 20, 1973, pending an appeal therefrom invites immediate decision by this court.[1] The Motion was made under the provisions of Rule 8, Appellate Rules of Civil Procedure.[2]

A stay is unnecessary and would only create confusion in the operation of the schools in Saluda County. The attendance of the students in the schools of Saluda County is the same as in the 1970-71, 1971-72, 1972-73 school years under this court's order of January 26, 1970, except for graduation and new students. All that has changed is that

[1] The motion for stay was filed August 31, 1973. No representative of the government asked this court for a hearing. Meanwhile, on September 6, 1973, the Board of Trustees of the two schools petitioned to have the State Superintendent of Education release funds critical to the operation of the schools. After this court set a hearing for the petition regarding the funds, counsel for the government, from Washington, called the court to ask if the motion to stay was to be heard. The court informed him that the return date had not arrived, and the gentleman was told the court would hear the petition for release of funds. At the hearing on the petition for release of funds government counsel appeared, and informed this court that the motion had been filed in the United States Fourth Circuit Court of Appeals. Then government counsel asked that the motion to stay be heard and counsel agreed. The court heard the matter, thereafter called to the Clerk of Court of the Fourth Circuit Court of Appeals at Richmond to assure that this court's jurisdiction had not been superseded.

[2] Rule 8(a) provides: Stay or Injunction Pending Appeal

Stay Must Ordinarily Be Sought in the First Instance in District Court; Motion for Stay in Court of Appeals. Application for a stay of the judgment or order of a district court pending appeal, or for approval of a *supersedeas* bond, or for an order suspending, modifying, restoring or granting an injunction during the pendency of an appeal must ordinarily be made in the first instance in the district court. A moton for such relief may be made to the court of appeals or to a judge thereof, but the motion shall show that application to the district court for the relief sought is not practicable, or that the district court has denied an application, or has failed to afford the relief which the applicate requested, with the reasons given by the district court for its action. The motion shall show the reasons for the relief requested and the facts relied upon, and if the facts are subject to dispute the motion shall be supported by affidavits, other sworn statements, or copies thereof. With the motion shall be filed, such parts of the record as are relevant. Reasonable notice of the motion shall be given to all parties. The motion shall be filed with the clerk and normally will be considered by a panel or division of the court, but in exceptional cases where such procedure would be impracticable due to the requirements of time, the application may be made to and considered by a single judge of the court.

the Saluda School District No. 1 School Board has undertaken to vest control of the Hollywood schools in a separate board appointed by it after a public meeting.

No order of this court has either authorized or condoned the creation of a new school district. This court has consistently refused to do so. Such issue is not before this court and was not before the court or passed on by the court in the orders of July 17, 1973, and August 20, 1973.

It is not necessary to the government's appeal that the operation of the Hollywood schools be interfered with during appeal when in fact the attendance in such schools is in accordance with the order of January 26, 1970, the validity of which was not challenged by the government.

There is no evidence before this court, and the plaintiff could offer none, that any action taken or contemplated would disturb the desegregation already accomplished by this court in previous orders. To delay the allocation of the State Funds in support of the Hollywood School operation would only disadvantage the school children and serve no proper purpose of the government.

The Motion is denied. A separate order allows the funds to be allocated in order that the schools may continue to operate pending the government's appeal.

This court is open to further motions. If this court has jurisdiction to pass on the creation of the School District, the ear of the court is ready upon filing of proper pleadings.

Motion for Stay denied.

AND IT IS SO ORDERED.

ROBERT W. HEMPHILL,
United States District Judge.

Columbia, South Carolina,
September 11, 1973.

TRUE COPY.
Test:
MILLER C. FOSTER, JR., Clerk,

CYNTHIA SKIPPER,

By: Deputy Clerk.

In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1499

HAROLD LONGSHORE, ET AL., PETITIONERS

v.

SALUDA COUNTY SCHOOL DISTRICT NO. 1 OF SALUDA COUNTY, SOUTH CAROLINA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

We respectfully invite the Court's attention to the following facts which show that the petition for a writ of certiorari was filed out of time. The judgment of the court of appeals was entered on December 13, 1973. No petition for rehearing was filed in the court of appeals. The time for filing a petition for a writ of certiorari expired on March 13, 1974, and no extension was sought. Since the petition was not filed until April 6, 1974, this Court lacks jurisdiction. 28 U.S.C. 2101(c).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

APRIL 1974.